IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 04.08.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.MANIKUMAR

Writ Appeal Nos.3055 and 3056 of 2001

Chinna Gounder .. Appellant in both appeals

Vs.

1.The District Collector,
Salem District, Salem.

2.The Special Tahsildar(L.A.)
Adi Dravidar Welfare,
Jawans Market, Sevvapettai
Road, Salem. ...Respondents in both appeals

Writ appeals filed under Clause 15 of the Letters Patent against the orders dated 4.12.2001 and 05.12.2001 made in W.P.No.17101 of 1999 and W.P.No.1712 of 2000 respectively.

W.P.No.17101/99 and 1712/2000 filed under Art.226 of the Constitution of India to issue a writ of Certiorari to call for the entire records relating to the G.O.Ms.No.21 Salem March 19,1999 Salem District Gazette Extraordinary, it relates to the lands belonging to the petitioner comprised in S.No.1 and 2/1 situated at Azhagapuram Pudur Village and rest of extent of 1.74 acres and 1.02 Hectares being acquired as sought for.

For Appellant : Mr.V.N.Mohanraj for
Mr.C.Prakasam

For Respondents : Mr.P.Wilson,
Special Government Pleader

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

JUDGMENT

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

Since the issue raised in both the writ appeals is one and the same, they are being disposed of by the following common order.

2. Aggrieved by the order of the learned single judge dismissing their writ petitions, the land owners have filed the above appeals.

3. Heard the learned counsel appearing for the appellant as well as the learned Special Government Pleader for the respondents.

4. In view of the order to be passed herein, we are of the view that it is unnecessary to refer to all the factual details. It is not in dispute that the appellant is the owner of the lands in Survey No.1, measuring 1.74 acres and Survey No.2/1, measuring 2.52 acres in Azhagapuram Pudur Village. The said lands were sought to be acquired by the respondents for the provision of house sites to the Adi Dravidars of Annadanapatti Village, Salem District. The said action was challenged by the appellant by way of separate writ petitions. The learned single Judge, by order dated 04.12.2001, disposed of W.P.No.17101 of 1999 filed by the appellant-Chinna Gounder and following the same, the other writ petition viz., W.P.No.1712/2000 was also dismissed on 05.12.2001.

5. The learned counsel appearing for the appellant at the foremost submitted that pursuant to the notice under Section 4(2) of the Tamil Nadu Acquisition of land for Harijan Welfare Scheme Act, 1978 (hereinafter referred to as "the Act") in Form-I dated 31.12.1998, the appellant has submitted his objections. On 18.01.1999, the Special Tahsildar, conducted an enquiry and overruled the objections raised by the land owner on the same day, i.e. on 18.01.1999. He further pointed out that thereafter, i.e. on 16.03.1999, the District Collector, Salem issued a notification under Section 4(1) of the Act in the District Gazette. By drawing our attention to Section 4(3)(b) of the Act, the learned counsel contended that as per the said provision, the Tahsildar i.e., the Officer authorised by the District Collector, is empowered to issue notice and receive objection from the land owner and thereafter, forward the same to the District Collector along with his recommendations, if any, for the decision of the District Collector. According to the counsel for the appellant, inasmuch as in the cases on hand the Tahsildar himself overruled the objections raised by the land owner, the ultimate decision taken by the District Collector and the publication made in the District Gazette under Section 4(1) cannot be sustained. In support of the above

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

contentions, apart from the above referred to statutory provision, he has also heavily relied on the common counter affidavit filed by the Special Tahsildar, (ADW) Salem in W.A.Nos.3055 and 3056 of 2001.

6. In order to appreciate the said contention, it is useful to refer the relevant legal provision :

> "4 (3)(a) The District Collector may, where he has himself called upon the owner or other person to show cause under sub-section (2), pass such orders as he may deem fit on the cause so shown;
> 4(3)(b) Where any officer authorised by the District Collector has called upon the owner or other person to show cause under sub-section (2), the officer so authorised shall make a report to the District Collector containing his recommendations on the cause so shown for the decision of the District Collector. After considering such report, the District Collector may pass such orders as he may deem fit."

7. As per the Tamil Nadu Act, if any land is sought to be acquired for the purpose of Harijan Welfare Scheme, it is for the District Collector, who is the competent authority, to initiate proceedings. This is evident from Sub Section (1) of Section 4. Sub Section (2) enables the District Collector or any Officer authorised by the District Collector to call upon the owner or any other person interested in such land to show cause why it should not be acquired. As per Sub Clause (a) of Sub Section (3), if the District Collector issues notice to the owner, it is for him to pass an order based on the objection of the land owner. Sub Clause (b) of Sub Section (3) makes it clear that when any Officer authorised by the District Collector viz., Tahsildar, issues notice to the land owner calling upon his objection, if any, on receipt of the same, he has to make a report to the District Collector containing his recommendations on the cause so shown, for the decision of the District Collector.

8. A plain reading of the above provision makes it clear that at the most, the Officer so authorised/Tahsildar is empowered to issue a show cause notice to the owner of the land, receive objection, offer his remarks/recommendations and send all those particulars to the District Collector for his decision. In other words, the decision making power lies with the District Collector. To put it clear, it is the District Collector, who alone can consider the objection of the land owner and either accept it or reject it and thereafter if he is satisfied, he can pursue the acquisition proceedings by publishing the same in the District Gazette.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

9. In the light of the above mentioned statutory provisions, now let us consider whether in the cases on hand, the decision was taken by the Special Tahsildar or the District Collector. In the common counter affidavit filed on behalf of both the respondents in W.A.Nos.3055 and 3056 of 2001, the Special Tahsildar(ADW) Salem, the second respondent has specifically stated that the objections were considered and rejected by him. It is relevant to note that in page 3 of the common counter affidavit at the bottom, the same Tahsildar has stated as follows:

> "..... Their objections were considered and overruled by the Special Tahsildar(ADW) Salem, in his proceedings ROC No.54/97/A dated 18.01.1999...."

Again in page 4 of the same counter in middle it is stated as follows:

> "Hence, the objections overruled by the Special Tahsildar (ADW), Salem, itself is enough."

The above information makes it clear that it was the Special Tahsildar, who rejected the objection filed by the land owner. (It is not in dispute that the petitioner/appellant is the owner of the lands in question).

10. It is also evident from the counter affidavit filed by the Special Tahsildar (ADW), Salem in writ proceedings in W.P.No.17101 of 1999, at page 2, that the Special Officer has specifically stated that 'the entire extent of 7.67.5 hectare belongs to the writ petitioner and his two sons'.

11. In view of the fact that the decision was taken by the Special Tahsildar by overruling the objections of the land owner, we are of the view that the procedure adopted by the second respondent is contrary to Section 4(3) (b) of the Act. Unfortunately, those aspects were not considered by the learned single Judge. Inasmuch as the order passed by the Special Tahsildar is contrary to the mandatory provision of the Act, the ultimate order passed by the District Collector is liable to be quashed in both the matters.

12. In the light of what is stated above, the orders passed by the learned single Judge dated 04.12.2001 in W.P.No.17101 of 1999 and dated 5.12.2001 in W.P.No.1712 of 2000 are set aside. The acquisition proceedings are quashed. In view of the same, both the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

writ appeals are allowed. No costs. However, it is made clear that if the first respondent, if so desires, is free to initiate fresh proceedings in accordance with law.

raa

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The District Collector,
Salem District, Salem.

2.The Special Tahsildar(L.A.)
Adi Dravidar Welfare,
Jawans Market, Sevvapettai
Road, Salem.

1 cc to Mr.C.Prakasam, Advocate, SR.34959
1 cc to Government Pleader, SR.34867

tej (co)

dv/23.8.06

W.A.No.3055 & 3056 of 2001

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/